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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,263	10/24/2001	Tom C. Xu		6959

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Tom C. Xu
21010 Sherman Drive
Castro Valley, CA 94552

EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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11/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/038,263	Applicant(s) XU, TOM C.	
	Examiner LYLE A. ALEXANDER	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 105-109, 111-115 and 117-121 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 105-109, 111-115 and 117-121 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1.

Claims 105-109 and 111 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Taylor et al. (USP 6,682,893).

Taylor et al. teach a fiber optic connected to a gel matrix that is impregnated with reagent. Paragraph[043] teach the gel matrix includes glucose oxidase and has been read on the claimed "oxidase/peroxidase enzymes." Paragraphs[84+] teach the gel is attached to a "tape" and associated with a machine readable indicia and have been read on the claimed "bonding." Paragraph[101] teaches the gel matrix is attached to an optical fiber or fiber optic rod and has been read on the claimed "optical fiber." Paragraph[129] teaches the gel pads can be deposited in an array on the optical fiber and have diameter of less than 500 microns in diameter. The teaching of the "diameter" has been read on the gel matrix being circular in shape when deposited on the end of the optical fiber. Paragraph[149] teaches using the gel matrix with glucose oxidase to detect glucose. Paragraphs[152-155] teach attachment of the gel matrix to the optical fiber by various methods that include3 hydrophilic/hydrophobic interactions. The claim language " ... wherein said first and second ends are polished ..." is not specific to the intended physical alterations of the tip and is sufficiently broad to have been properly read on Taylor et al. The taught optical fiber is inherently associated with a

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photometrical detector because why else would an optical fiber be used and how else could the results be obtained.

Claims 112-115 and 117-121 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Garcia et al. (USP 4,637,403).

Garcia et al. teach a personal glucose detector that is in the shape of a pen and has a LCD display for the glucose concentrations. The device(30) comprises an outer housing(32) and a core portion(34) disposed within the housing. An optical measurement means(50) comprises a phototransistor(52) connected to the appropriate electronics to quantify the blood glucose level are all with the housing(32). A reagent strip(94) is within the housing(32) and is contacted with needle(90) to receive a blood sample. Column 8 lines 28-33 teach the glucose is quantified colorimetrically and/or photometrically and/or conductivity/impedance. The claimed "ball point pen shaped housing" has been read on the taught device(30). The claimed "photometrical detector" has been read on the taught optical measurement means(50). The claimed "display" has been read on the taught LCD display. The claimed "optical probe" has been read on the depiction of the connected electronics in figure 5. The claimed "clip" and "button" on the taught clip(16) and button(36). The claimed "microtube" has been read on the taught needle(90). The claimed "reagent pad" has been read on the taught strip(94).

Response to Arguments

Applicant's arguments filed 8/21/09 have been fully considered but they are not persuasive.

Applicant states the “gel” matrix taught by the cited prior art Taylor, would dry up and not work or operate. The Office maintains the method of use is of no patentable moment with respect to the pending apparatus claims.

Applicant state Taylor fails to teach the claimed “means for bonding”. The instant claim language is sufficiently broad to have been read on any type of attachment, such as that taught by Taylor. Further, it is not clear if Applicant intends to invoke 35 USC 112 6th paragraph with the “means for bonding” language. The specification was consulted to see if there was support for “bonding means” invoking 112 6th paragraph as meaning an adhesive. There was no reference to adhesive or “bonding means” in the specification.

Applicant states the device of Taylor employs optical fibers of certain diameters. The instant claims do not contain any limitations to certain diameters or exclusion of other diameters. The Office maintains Taylor has been properly read on the pending claims.

Applicant argues the device of Taylor will be “overwhelmed” and not able to detect glucose and would inherently have the same ability to detect glucose.

Applicant traverses the rejections over Garcia stating this reference requires a vacuum to collect the sample whereas the instant invention does not. These remarks are not commensurate in scope with the pending claims that do not exclude the use of a vacuum. Additionally, Applicant states the detection taught by Garcia occurs within the housing whereas in the instant invention it occurs outside of the housing. Again, these

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remarks are not commensurate in scope with the pending claims that do not describe a structure that only permits analysis outside of the device.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797